

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF CONNECTICUT**

LUCILLE RUBIN,	:	
Plaintiff,	:	
	:	
-vs-	:	Civ. No. 3:00cv1657 (PCD)
	:	
T. DONALD HIRSCHFELD,	:	
HIRSCHFELD MANAGEMENT, INC.,	:	
and GINETTE S. OWINGS,	:	
Defendants.	:	

**RULING ON MOTION FOR PROTECTIVE ORDER**

Plaintiff moves pursuant to FED. R. CIV. P. 26(c) for a protective order to prevent disclosure of certain information through documents and deposition testimony. Defendants respond with a motion to compel testimony and the production of documents for which the protective order is sought by plaintiff. The motion for a protective order is granted in part and the motion to compel is granted in part.

**I. BACKGROUND**

Between 1974 and 1996, plaintiff and defendant T. Donald Hirschfeld, among others, owned a shopping center. In 1996, the parties formed RH Taylorville, LLC (“RH Taylorville”), a limited liability company. On August 1, 1996, the parties entered into an Operating Agreement through which defendant Hirschfeld Management, Inc. was appointed manager of RH Taylorville. The complaint filed in the present case alleges that Hirschfeld Management, Inc. breached the Operating Agreement by charging fees for its services as manager.

On August 29, 2000, plaintiff filed a five-count complaint alleging that defendants breached the Operating Agreement by charging a fee for the management of RH Taylorville, breached a fiduciary

duty owed to her by charging a fee, defrauded her by representing that no compensation would be sought for services rendered, and violated the Connecticut Unfair Trade Practices Act ("CUTPA"), CONN. GEN. STAT. § 42-110a *et seq.*, through the charging of fees in connection with the management and operation of RH Taylorville. Plaintiff also sought judicial dissolution of RH Taylorville.

Defendants, in their answer, claimed lack of subject matter jurisdiction, failure to state a claim for which relief can be granted, failure to include a necessary party, and that the claims were barred by provisions of the Operating Agreement. Defendants counterclaimed for fees authorized under the Operating Agreement and unjust enrichment for services rendered in management of the property. Plaintiffs denied both claims.

On September 18, 2001, defendants served plaintiffs interrogatories and requests for document production. On November 1, 2001, plaintiff responded to the discovery requests. On December 21, 2001, plaintiff supplemented her response to the request in response to deficiencies identified by defendants. Defendants now seek a protective order precluding inquiry into the third party business relationships of plaintiff or Walter Rubin, her husband.

## II. MOTION TO COMPEL PRODUCTION

Defendants allege that plaintiff improperly refused to respond to certain interrogatories and requests for production and should be compelled to respond. Plaintiff responds that the interrogatories sought irrelevant information and serve only to harass.

Defendants take issue with plaintiff's refusal to respond to five interrogatories and three requests for document production. The first interrogatory ("First Interrogatory") requested that plaintiff identify all business interests in which plaintiff and her husband had an interest since 1974, and details as

to the identity, real estate holdings, managerial duties and managerial compensation for each interest. The second interrogatory (“Second Interrogatory”) requested that plaintiff identify documents that govern managerial compensation for all interests identified in First Interrogatory. The third interrogatory (“Third Interrogatory”) requested that plaintiff identify whether any restructuring or redevelopment occurred in the interests identified in First Interrogatory and, if so, identify the parties involved, relationship to management and individual compensation. The fourth interrogatory (“Fourth Interrogatory”) requested that plaintiff identify any activities performed by her with respect to the Taylorsville, Illinois property since 1974. The fifth interrogatory (“Fifth Interrogatory”) requested that plaintiff identify any activities performed by her husband with respect to the Taylorsville, Illinois property since 1974.

The first document request (“First Document Request”) sought production of all documents between plaintiff and any defendant from January 1, 1974 related to the Taylorsville, Illinois property. The thirteenth document request (“Thirteenth Document Request”) sought any document identified in the Second Interrogatory. The fourteenth document request sought any document supporting the response to interrogatories three through seven.

All objections to interrogatories and requests for production were on grounds of relevancy.

#### A. STANDARD

“Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party . . . . Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence.” FED. R. CIV. P. 26(b)(1). The scope of discovery, however, is not without bounds, and limitations are imposed where

the discovery is “unreasonably cumulative or duplicative,” overly “burdensome . . . [or] expensive” or “the burden or expense of the proposed discovery outweighs its likely benefit.” FED. R. CIV. P. 26(b)(2). An order compelling discovery is rendered after consideration of the arguments of the parties, and such order may be tailored to the circumstances of the case. *Gile v. United Airlines, Inc.*, 95 F.3d 492, 496 (7th Cir. 1996).

## B. DISCUSSION

Defendants assert that the information sought is relevant to the issues at hand, therefore plaintiff should be ordered to respond to the requests. Plaintiffs respond that the requests are irrelevant and thus not properly the subject of discovery.

The five-count complaint centers on (1) the terms of the Operating Agreement and (2) RH Taylorville. Under Connecticut law,

A contract is to be construed as a whole and all relevant provisions will be considered together. . . . In giving meaning to the terms of a contract, . . . a contract must be construed to effectuate the intent of the contracting parties . . . . In ascertaining intent, we consider not only the language used in the contract but also the circumstances surrounding the making of the contract, the motives of the parties and the purposes which they sought to accomplish. . . . The intention of the parties to a contract is to be determined from the language used interpreted in the light of the situation of the parties and the circumstances connected with the transaction. The question is not what intention existed in the minds of the parties but what intention is expressed in the language used. . . . This is so where the parties have their agreement in writing . . . . In interpreting contract items, we have repeatedly stated that the intent of the parties is to be ascertained by a fair and reasonable construction of the written words and that the language used must be accorded its common, natural, and ordinary meaning and usage where it can be sensibly applied to the subject matter of the contract. . . . Where the language of the contract is clear and unambiguous, the contract is to be given effect according to its terms.

*Barnard v. Barnard*, 214 Conn. 99, 109-10, 570 A.2d 690 (1990) (citations omitted; internal quotation marks omitted.) .

Notwithstanding the broad scope of permissible discovery, FED. R. CIV. P. 26(b)(1) limits discovery to matters “relevant to the claim or defense of any party.” The First Interrogatory requests information on “any entity . . . where [plaintiff] and/or [her husband] received income from or distributions in connection with real estate.” In response, plaintiff limited her response to information on RH Taylorville. Defendants’ argument that the portion of the interrogatory to which plaintiff objected is necessary to test “her contentions about the propriety of the fees at issue in the case” is without merit. Plaintiff’s objection to the First Interrogatory was proper.

The Second Interrogatory requests the identification of documents governing “manager’s or managing agent’s compensation” as to managers identified in response to the First Interrogatory. Plaintiff again objected and limited her response to RH Taylorville. As with the First Interrogatory, defendants provide no basis under contract law for the relevance of the information sought. Plaintiff properly objected to the First Interrogatory.

The Third Interrogatory seeks information on construction on real property owned by entities identified in the First Interrogatory, persons performing the construction and compensation therefor. Plaintiff did not provide a response. To the extent that this request is limited to RH Taylorville and transactions in connection with the Operating Agreement, plaintiff is ordered to respond to the interrogatory.

The Fourth Interrogatory seeks a delineation, from 1974 to the present, “any and all activities performed by [plaintiff] with respect to” RH Taylorville. Defendants argue that plaintiff’s general response inadequately addresses the request to delineate responsibilities on a yearly basis through the requested time period. This request bears relevance to the subject property and involves a party to the

Operating Agreement. Plaintiff is therefore ordered to respond as request.

The Fifth Interrogatory seeks a delineation, from 1974 to the present, “any and all activities performed by [plaintiff’s husband] with respect to” RH Taylorville. Plaintiff responded that her husband shared responsibility for the management of RH Taylorville. It is not apparent, even characterizing her husband as her agent, as to how his activities are relevant to a claim that plaintiff improperly was compensated for the management of the property or a counterclaim for refusal to compensate defendants as agreed. The objection to the Fifth Interrogatory was proper.

The First Document Request seeks production of all documents between plaintiff or her husband and any defendant from January 1, 1974 related to the Taylorsville, Illinois property. Plaintiff limited production to documents generated in 1996 and later. The complaint alleges that defendant Hirshfeld represented to her that “as in the past, there would be no fees or commissions charged in connection with the operation of the Property,” thus the request would produce relevant documents. Compliance with the requested production would, however, be unduly burdensome. Plaintiff will therefore produce only those documents produced during the relevant time period that relate to fees or commissions charged in connection with the management of the property.

The Thirteenth Document Request seeks production of all documents identified in the Second Interrogatory. Having concluded that the Second Interrogatory was improper, the production request associated with the interrogatory is similarly improper.

The Fourteenth Document Request seeks Plaintiff limited production to documents generated in 1996 and later. The complaint alleges that defendant Hirshfeld represented to her that “as in the past, there would be no fees or commissions

charged in connection with the operation of the Property,” thus the request would produce relevant documents. Compliance with the requested production would, however, be unduly burdensome. Plaintiff will therefore produce only those documents produced during the relevant time period that relate to fees or commissions charged in connection with the management of the property.

### III. MOTION FOR A PROTECTIVE ORDER

Plaintiff argues that defendants may not inquire into her or her husbands business affairs with third parties as such information is irrelevant to the present claims, which are limited to the Operating Agreement. Defendants respond that plaintiff unduly narrows the issue and the information sought is relevant to the present claims.<sup>1</sup>

#### A. STANDARD

A protective order may issue on good cause shown by the moving party. FED. R. CIV. P. 26(c); *Dove v. Atlantic Capital Corp.*, 963 F.2d 15, 19 (2d Cir. 1992). Rule 26(c), however, “is not a blanket authorization for the court to prohibit disclosure of information whenever it deems it advisable to do so, but is rather a grant of power to impose conditions on discovery in order to prevent injury, harassment, or abuse of the court’s processes.” *Bridge C.A.T. Scan Assocs. v. Technicare Corp.*, 710 F.2d 940, 944-45 (2d Cir. 1983).

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<sup>1</sup> Defendants also contend that plaintiff lacks standing to move for a protective order precluding inquiry into her husband’s business affairs. Although plaintiff’s husband, as “the person from whom discovery is sought,” FED. R. CIV. P. 26(c), could move for such an order, defendants mischaracterize the basis for seeking the order. Plaintiff seeks to preclude the introduction of irrelevancies against her as a party, and has standing to do so.

## B. DISCUSSION

Plaintiff asserts that defendants have no basis to inquire as to her or her husband's business dealings outside the RH Taylorville operation, thus a protective order is necessary. Defendants claim that such information is relevant to the interpretation of the terms of the Operating Agreement.

A protective order issues on good cause shown by the moving party. A moving party may not establish good cause through conclusory statements. *Anderson v. Cryovac, Inc.*, 805 F.2d 1, 8 (1st Cir. 1986). Good cause is established by demonstrating "a clearly defined and serious injury" resulting from disclosure. *Glenmede Trust Co. v. Thompson*, 56 F.3d 476, 483 (3d Cir. 1995).

## IV. CONCLUSION

Plaintiff's motion for a protective order (Doc. 61), as cast, is **denied**. However, the disclosure thus required will be limited such that the information items provided shall not be communicated but to and between counsel and plaintiff and not otherwise than for the purposes of necessary prosecution of this lawsuit.

SO ORDERED.

Dated at New Haven, Connecticut, December \_\_\_, 2001.

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Peter C. Dorsey  
United States District Judge